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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEVIN FERNANDEZ,
Plaintiff,

vs.

DR. CENTRIC, et. al.

Defendants.

3:12-cv-00401-LRH (WGC)

ORDER

Before the court is Plaintiff's Motion for a More Definite Statement. (Doc. # 68.)¹ Defendants opposed (Doc. # 70) and Plaintiff replied (Doc. # 80).

I. BACKGROUND

At all relevant times, Plaintiff Kevin Fernandez was an inmate in custody of the Nevada Department of Corrections (NDOC). (Pl.'s Compl. (Doc. # 4) at 1.)² The allegations giving rise to this action took place while Plaintiff was housed at Northern Nevada Correctional Center (NNCC). (*Id.*) Plaintiff, a pro se litigant, brings this action pursuant to 42 U.S.C. § 1983. (*Id.*) Defendants are Dr. Ronald Centric, Greg Cox, Susan Fritz, Dr. Karen Gedney³, David Konrad, Jack Palmer, Dr. John Scott, Elizabeth Walsh, and Robert Schober.⁴ Plaintiff has also named

¹ Refers to the court's docket number.

² A motion for leave to amend the Complaint is currently pending and will be addressed in a separate order. (See Doc. # 72.)

³ Erroneously identified by Plaintiff in the Complaint as Dr. Gentney. (See Errata at Doc. # 93.)

⁴ Erroneously identified by Plaintiff in the Complaint as Sergeant Chubert. (See Errata at Doc. # 92.)

1 various doe defendants that have not yet been identified.⁵

2 Plaintiff asserts claims against Defendants under the First, Eighth, and Fourteenth
3 Amendments in connection with his placement in the Mental Health Unit (MHU) at NNCC,
4 being labeled mentally ill, being subjected to treatment for mental illness through therapy, and
5 involuntary administration of anti-psychotic prescription drugs. (Doc. # 4.)

6 Plaintiff now moves under Federal Rule of Civil Procedure 12(e) for a more definite
7 statement; arguing that the answer filed by Defendants merely contains “boilerplate” language,
8 and that Defendants denied Plaintiff’s allegations when they are true. (Doc. # 68.) Defendants
9 argue that Plaintiff’s motion should be denied as improper because no responsive pleading is
10 permitted with respect to an answer. (Doc. # 70.)

11 II. DISCUSSION

12 Federal Rule of Civil Procedure 12(e) provides, in pertinent part:

13 A party may move for a more definite statement of a pleading to which a
14 responsive pleading is allowed but which is so vague or ambiguous that the party
15 cannot reasonably prepare a response. The motion must be made before filing a
16 responsive pleading and must point out the defects complained of and the details
17 desired.

18 Fed. R. Civ. P. 12(e).

19 A motion for more definite statement is disfavored. *See U.S. E.E.O.C. v. Alia Corp.*, 842
20 F.Supp.2d 1243 1250 E.D. Cal. 2012); *C.B. v. Sonora School Dist.*, 691 F.Supp.2d 1170, 1191
21 E.D. Cal. 2010). It does not appear that the Ninth Circuit has determined whether a Rule 12(e)
22 motion may be used to attack an answer. The Northern District of Texas found that a plaintiff
23 could not file a Rule 12(e) motion with respect to an answer because “Rule 12(e) only applies
24 to ‘a pleading to which a responsive pleading is permitted[.]’” and “Rule 7(a) does not permit
25 a responsive pleading to an affirmative defense or an answer unless the court orders one.”
26 *Travelers Indem. Co. of Conn. v. Presbyterian Healthcare Resources*, 313 F.Supp.2d 648 (N.D.
27 Tex. 2004). The Southern District of Florida, on the other hand, did permit such a motion. *See*
28 *Exhibit Icons, LLC v. XP Cos., LLC*, 609 F.Supp.2d 1282, 1300 (S.D. Fla. 2009) (allowing

⁵A motion for leave to amend to substitute in the names of various doe defendants is currently pending and will be addressed in a separate order. (See Docs. # 86, # 91.)

1 defendants an opportunity to amend “vague” or “ambiguous” affirmative defenses).

2 The court agrees with the Northern District of Texas that Plaintiff may not direct a Rule
3 12(e) motion toward Defendants’ answer because Rule 12(e) only applies to “a pleading to
4 which a responsive pleading is permitted,” and a reply to an answer may only be filed by order
5 of the court and this court has not ordered such a reply be filed.

6 Even if a motion for more definite statement directed toward an answer were permitted
7 in this circuit, the answer that is the subject of the motion must be unintelligible and not just
8 lacking in some detail. *See U.S. E.E.O.C. v. Alia Corp.*, 842 F.Supp.2d at 1250 (citation omitted)
9 (“The purpose of Rule 12(e) is to provide relief from a pleading that is unintelligible, not one
10 that is merely lacking detail.”); *Gregory Village Partners v. Chevron, U.S.A.*, 805 F.Supp.2d
11 888 (N.D. Cal. 2011) (“A motion for more definite statement attacks intelligibility, not simply
12 lack of detail.”). “Where the [pleading] is specific enough to [apprise] the responding party of
13 the substance of the claim [or defense] being asserted or where the detail sought is otherwise
14 obtainable through discovery, a motion for a more definite statement should be denied.” *See*
15 *U.S. E.E.O.C. v. Alia Corp.*, 842 F.Supp.2d at 1250 (citation omitted).

16 The court has reviewed Defendants’ answers (Docs. # 51, # 57) and does not find them
17 to be unintelligible. Instead, the court finds that they comport with the requirements set forth
18 in Federal Rule of Civil Procedure 8 which provides that an answer must “state in short and
19 plain terms its defense to each claim asserted against it” and “admit or deny the allegations
20 asserted against it by an opposing party.” Fed. R. Civ. P. 8(b)(1). Each “denial must fairly
21 respond to the substance of the allegation.” Fed. R. Civ. P. 8(b)(2). A party is within its rights
22 to admit that part of an allegation that is true and deny the rest. Fed. R. Civ. P. 8(b)(4). In
23 addition, “[a] party that lacks knowledge or information sufficient to form a belief about the
24 truth of an allegation must so state, and the statement has the effect of a denial.” Fed. R. Civ.
25 P. 8(b)(5). Finally, a party must include all affirmative defenses. Fed. R. Civ. P. 8(c)(1).

26 Therefore, to the extent Plaintiff attacks Defendants’ answers because they contain the
27 “boilerplate” language that there is insufficient information to admit or deny, his motion should
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1 fail as Defendants are specifically entitled to utilize this response. Moreover, if Plaintiff believes
2 that Defendants should have admitted certain aspects of his allegations, it is his burden to
3 prove a particular allegation true at trial. If Plaintiff meets his burden, he would certainly be
4 permitted to introduce Defendants' answer at the time of trial to show any apparent
5 contradictory positions taken by Defendants, but the court cannot compel Defendants to
6 change their response to his allegations.

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8 **III. CONCLUSION**

9 For the foregoing reasons, Plaintiff's motion (Doc. # 68) is **DENIED**.

10 DATED: January 24, 2013

11 
12 WILLIAM G. COBB
13 UNITED STATES MAGISTRATE JUDGE
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